

the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

(b) *Material prepared for litigation.* A participant may not obtain discovery of material prepared in anticipation of litigation by another participant, unless that participant demonstrates a substantial need for the material and that substantially equivalent material cannot be obtained by other means without undue hardship. In ordering any such discovery, the presiding officer will prevent disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney.

(c) *Expert testimony.* Unless otherwise restricted by the presiding officer under Rule 410(c), a participant may discover any facts known or opinions held by an expert concerning any relevant matters, not privileged. Such discovery will be permitted only if:

(1) The expert is expected to be a witness at hearing; or

(2) The expert is relied on by another expert who is expected to be a witness at hearing, and the participant seeking discovery shows a compelling need for the information and it cannot practicably be obtained by other means.

[Order 225, 47 FR 19022, May 3, 1982, as amended by Order 466–A, 52 FR 35909, Sept. 24, 1987]

**§ 385.403 Methods of discovery; general provisions (Rule 403).**

(a) *Discovery methods.* Participants may obtain discovery by data requests, written interrogatories, and requests for production of documents or things (Rule 406), depositions by oral examination (Rule 404), requests for inspection of documents and other property (Rule 407), and requests for admission (Rule 408).

(b) *Discovery conferences.* (1) The presiding officer may direct the participants in a proceeding or their representatives to appear for one or more conferences, either separately or as part of any other prehearing conference in the proceeding under Rule 601(a), for the purpose of scheduling discovery, identifying discovery issues, and resolving discovery disputes. Except as provided in paragraph (b)(2) of this section, the presiding officer, upon the conclusion of a conference, will

issue an order stating any and all decisions made and agreements reached during the conference.

(2) The Chief Administrative Law Judge may, upon a showing of extraordinary circumstances, waive the requirement to issue an order under paragraph (b)(1) of this section.

(c) *Identification and certification of preparer.* Each response to discovery under this subpart must:

(1) Identify the preparer or person under whose direct supervision the response was prepared; and

(2) Be under oath or, for representatives of a public or private corporation or a partnership or association or a governmental agency, be accompanied by a signed certification of the preparer or person supervising the preparation of the response on behalf of the entity that the response is true and accurate to the best of that person's knowledge, information, and belief formed after a reasonable inquiry.

(d) *Supplementation of responses.* (1) Except as otherwise provided by this paragraph, a participant that has responded to a request for discovery with a response that was complete when made is not under a continuing duty to supplement that response to include information later acquired.

(2) A participant must make timely amendment to any prior response if the participant obtains information upon the basis of which the participant knows that the response was incorrect when made, or though correct when made is now incorrect in any material respect.

(3) A participant may be required to supplement a response by order of the presiding officer or by agreement of all participants.

(4) A participant may request supplementation of prior responses, if such request is permitted under the procedural schedule.

[Order 225, 47 FR 19022, May 3, 1982, as amended by Order 466–A, 52 FR 35909, Sept. 24, 1987]

**§ 385.404 Depositions during proceedings (Rule 404).**

(a) *In general.* (1) A participant may obtain the attendance for a deposition by oral examination of any other participant, an employee or agent of that